

# A Brief Overview of the Birth Information and Tracing Bill 2022

## 1. Background

In January 2021, the Government published the Final Report of the Commission of Investigation into Mother and Baby Homes. In response to the recommendations of the report, the Government committed to introducing legislation to give people a clear legal right to access their birth and early life information. The legislation would also establish in law a tracing service, to help people find and make contact with relatives.

The first stage was for Government to approve and publish the General Scheme and Heads of Bill, which set out the main legal changes or provisions of the proposed legislation. This was achieved in May 2021, at which point an opportunity was provided to the public, stakeholders and an Oireachtas Committee to scrutinise the General Scheme and offer feedback. The Oireachtas Committee completed its scrutiny and provided its report of the proposed legislation in December 2021.

Having considered all feedback, the Minister worked with the Attorney General to prepare the Birth Information and Tracing Bill. The Bill was approved by Government and was published on 12 January 2022. It now needs to be passed by both Houses of the Oireachtas before it can be signed into law.

## 2. Purpose of the Bill

The Birth Information and Tracing Bill 2022 seeks to enshrine in law the importance of a person knowing his or her origins. It aims to address the difficulties currently faced by people in accessing birth and early life information through a fresh approach which guarantees the full and un-redacted release of such information to persons who have attained the age of 16 years. In summary, the Bill provides for:

- Release of the birth certificate, birth information, early life information, care information and medical information for all persons who were adopted, boarded out, the subject of an illegal birth registration or who otherwise have questions in relation to their origins (hereafter referred to as a “relevant person”);
- Release of the birth certificate, birth information, early life information, care information and medical information to the child of a relevant person in a situation where the relevant person and the parents named on the birth certificate are deceased;
- Release of information to a next of kin of a relevant person who died as a child in one of the institutions specified in the Bill;
- A statutory tracing service for persons wishing to make contact, share or seek information;
- A Contact Preference Register, established in law, through which people can register their preference in relation to contact with a child or genetic relative, as well as lodge personal communications or contemporary medical information; and

- The safeguarding of relevant records.

The Bill also amends the Civil Registration Act 2004 to address key issues arising for people affected by illegal birth registration by:

- providing a robust legal basis for the transfer of information from Tusla to the GRO, thereby vindicating the right of relevant individuals to an accurate birth registration; and
- providing the relevant individual with an entitlement to live under whichever identity they prefer (i.e. their accurate birth identity or the ‘social’ identity by which they have lived their whole lives) and to have their social parents recognised in law through the mechanism of a parallel register.

It is intended that the Bill will also contain further measures to address issues arising for people affected by illegal birth registration, particularly succession issues.

### 3. Access to Information- Persons who can apply

This legislation has been drafted to address a recognised unfairness in Irish society where some people have not been able to access their birth certificate or other birth and early life information which many of us take for granted. Under the legislation, the following people over the age of 16 years will be able to apply for birth certificates, birth information, early life information, care information and medical information:

- an adopted person
- a person who is or has been the subject of an illegal birth registration
- a person who has been nursed out or boarded out
- a person who has reasonable grounds for suspecting that they may have been the subject of an incorrect birth registration
- a person who has reasonable grounds for suspecting that they may have been nursed out or boarded out
- a person who does not fall into any of the above categories but who resided as a child in a Mother and Baby Home Institution or County Home listed in schedule 1 of the Bill.

The legislation uses a term “**relevant person**”, to represent all the categories of people described above who will benefit from this legislation.

Importantly, where a relevant person is now deceased, their son or daughter (termed a “**qualifying person**” in the legislation) will have the same right to apply for information that relates to their parent, as long as the relevant person’s parents are also deceased. In other words, they can receive the same suite of birth certificate, birth, early life, care and medical information that their parent (the relevant person) would have been entitled to receive.

Furthermore, a next of kin of a relevant person can also apply for this information where the relevant person died whilst resident as a child in an institution as listed in the legislation. In the legislation, a next of kin in this circumstance is defined as a “**qualifying relative**” and the order of hierarchy of next of kin is set out.

#### 4. Access to Information- Where does a relevant person apply?

The intention of the legislation is to rapidly unlock access to records in relation to birth and early life information where they reside and to provide clear and comprehensive rights of access to information which is central to a person's identity. In line with this intention, the Bill entitles a relevant person (or a qualifying person or qualifying relative) to apply to any **“relevant body”** for any information it may hold. The Bill designates the Adoption Authority of Ireland and Tusla as relevant bodies and provides for the Minister to prescribe other relevant bodies by regulation. This could include statutory bodies such as Government Departments or Agencies, as well as non-statutory bodies, such as religious congregations who may hold records which contain birth and early life information.

This approach ensures that those with enduring questions in relation to their origins can access their birth, early life, care and medical information as quickly as possible. There will be no delay generated by the need to firstly centralise records and create and resource new structures for this purpose. The approach also recognises the broader Government commitment to a central repository of institutional records and the creation of a National Memorial and Records Centre, while ensuring a priority focus on immediate access for individuals to their origins information. Work on the creation of a National Memorial and Records Centre is being led by the Secretary General to the Government.

In a similar manner to Subject Access Requests under GDPR, people will be able to apply to any relevant body for any information it may hold about them. To support people who wish to apply for information under the legislation, a dedicated website will be established which will list all relevant bodies and provide clear information on how to apply. Support and assistance will also be available through the Adoption Authority and Tusla to those who wish to make an application to one or more relevant bodies. This will include clear signposting as to which relevant bodies hold which historical records.

## 5. Different types of information that can be accessed

This legislation aims to give access to a broad range of information that will assist people in understanding the origin and circumstances of their birth, care and early childhood. Often there will be different types of information and it will be held on different records and files. The type of information which will be released on application from a relevant person, qualifying person or qualifying relative is described below. Where information exists, the applicant will get this information in full and will also get a copy of the record or records on which the information is held.

**Birth information** means information relating to a relevant person at the time of his or her birth. It will include personal data such as

- their forename and surname
- the date, place and time of their birth
- their sex
- the forename, surname, birth surname, address, occupation, date of birth, civil status and, where applicable, former surname of their mother
- the birth surname of their mother's mother
- the forename, surname, birth surname, address, occupation, date of birth, civil status and, where applicable, former surname of their father
- the birth surname of their father's mother

**Care information** means the information relating to the care of a relevant person that was under care of the State, or in care arranged by the State up to the age of 18, or they were adopted. This would include important information such as:

- the name of any person that arranged the care of the person
- the person that was in charge or supervised the care
- where and when the care took place

**Early life information** means the information relating to a relevant person after they were born and before they reached the age of 18, or were adopted. This would include important information such as:

- Where and for how long a person was under care for
- The period in which the person's mother stayed with them
- Any religious or spiritual events including baptism and the baptismal certificate
- Their health including any medical treatments, procedures or vaccinations administered, physical and emotional development
- Any visits by relatives during the care period
- Details of any adoption arrangements

**Medical information** means information relating to a relevant person's medical history. The applicant's own medical history, such as vaccinations will be released to them.

In certain circumstances the medical history of a genetic relative may be critically important for an individual to be aware of in order that they can manage their health. As a relevant person may not know or have a relationship with their genetic relatives, it may be important for them to have access to this information. In such circumstances, the medical information will be shared with the relevant person through a nominated medical practitioner such as a GP. Guidelines will be developed to assist with this process.<sup>1</sup>

**Incorrect birth registration information** means the information relating to a relevant person whose birth was illegally registered. This would include important information such as the circumstances under which the person's birth was illegally registered and the name of the person who made arrangements for the registration.

**Provided item** includes any item held by the Adoption Authority or Tusla which was provided by a relevant parent, carer or other family member for the purpose of being made available to the relevant person on request. The item could be a letter, photograph, memento or other document or object. It could have been provided historically or could be an item which was lodged through the statutory Contact Preference Register.

## 6. Process for releasing information

Where a person applies for a birth certificate or birth information, the relevant body who receives the application must check with the Adoption Authority for any contact preferences registered by the parent on the Contact Preference Register (see section 7). Where there is nothing on the register or there is a preference for contact, the relevant body will communicate this when providing the birth certificate or information to the applicant.

If a preference for no contact is communicated by a parent, then the person will be informed of this via an information session and the birth certificate or birth information will then be provided to the applicant. The information session can be held by phone, video call or in person, depending on the preference of the applicant. The content of an information session will encompass the entitlement of the relevant person to obtain his or her birth certificate or birth information, the fact that the parent concerned has stated, in accordance with this legislation, that he or she is not willing to be contacted by the relevant person, and the importance of respecting the privacy rights and the preference of the parent.

The information session will be conducted sensitively and respectfully, acknowledging the rights and wishes of all parties, and once complete it will be recorded on the Contact Preference

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<sup>1</sup> Qualifying relatives can apply for the medical information of the relevant person who was their next of kin and who died as a child in an institution. They cannot apply for the medical information of another genetic relative.

Register, ensuring that a person will only be required to participate in one information session regardless of the number of applications for information made.

The information session is an essential element of the process for full and guaranteed release of birth certificates and birth information. This is because it ensures that the State has balanced the EU and constitutional rights of both parties- the right of the relevant person to access their identity information with the right of the parent to privacy.

## 7. Contact preference register

The legislation also aims to establish in law a contact preference register. This is a database where people can register a preference regarding future contact with a family member such as a child who was adopted. The Adoption Authority will create and maintain this register.

The following people will be able to apply to the Contact Preference Register:

- An adopted person, a person who was subject to an illegal birth registration, a person who was nursed out, or boarded out, or a person who resided as a child in any institution listed in the schedule (relevant persons);
- The parent at birth of any person listed above;
- Genetic relatives consisting of a grandparent, sibling, aunt, uncle, or first cousin of a relevant person;
- The adoptive parent of an adopted child;
- The adoptive parent of an adopted child or adopted person, where the adopted child or adopted person is deceased;
- A person who provided care to a relevant person as part of a care arrangement.

The register offers flexibility in terms of the preferences people can register. For example, a person can indicate a wish for contact, a willingness for contact, a request for no contact or a request for no contact but a willingness to share information. It is important to note that the Adoption Authority will not facilitate direct engagement between the two people unless they have both registered a preference for contact.

The Contact Preference Register will empower people to make contact or share information on a level and in a manner with which they are comfortable. It will enable the sharing of contemporaneous information between family members, without the necessity to also make contact, should that be what their wish.

## 8. Tracing service

The establishment in law of a tracing service is another aim of this legislation. This service will enable people to trace family members for consensual contact or sharing of information.

Similarly to the Contact Preference Register, the tracing service will facilitate the sharing of important contemporaneous information, including vital medical information, between family members, as well as assist and support reunion between people if they so wish. The tracing service offers a more timely and proactive method of sharing information, or seeking to make contact with another person.

The following people will be able to apply for a tracing service:

- An adopted person, a person who was subject to an illegal birth registration, a person who was nursed out, or boarded out, or a person who resided as a child in any institution listed in the schedule (relevant persons);
- The parent of any person listed above;
- Genetic relatives consisting of a grandparent, sibling, aunt, uncle, or first cousin of a relevant person.

## 9. Safeguarding of Records

The Bill provides for the immediate safeguarding of records and also provides for records to be transferred to the Adoption Authority of Ireland under a direction from the Authority. In this regard, it stipulates that the Authority should have regard to records that are at risk for any reason.

To achieve the safeguarding of records, the Bill introduces the concept of an information source. An information source is a person, body or organisation who holds relevant records and is obliged to safeguard those records. The Adoption Authority and Tusla are defined as primary information sources, while a range of other bodies are defined as secondary information sources. Secondary information sources are required to furnish a statement to the Authority on request which will state the nature, current location and condition of the relevant records held. They can also be required to transfer these records to the Adoption Authority. In this way, the Bill ensures that the Authority, on behalf of the State, can develop a comprehensive picture of relevant records which are held by different bodies and can take ownership of these records where appropriate.

## 10. Who is responsible for developing and delivering these changes

The Minister for Children, Equality, Disability, Integration and Youth is the Minister with lead responsibility for the Birth Information and Tracing Bill 2022.

The Adoption Authority has responsibility for the establishment and maintenance of the contact preference register. Individuals wishing to register a preference or change their existing preference, will do so through an application to the Adoption Authority.

The Child and Family Agency, Tusla, will have responsibility for accepting applications to the statutory tracing service which will be delivered by both Tusla and the Adoption Authority. Both bodies will also provide support and assistance to people in relation to the services offered under the legislation.